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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
Petitioners.

versus

SOCONY-VACUUM OIL COMPANY, INC.,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HALL ETTER,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
(Libellants-Appellees Below),
Petitioners.

versus

SOCONY-VACUUM OIL COMPANY, INC.,
(Respondent-Appellant Below),
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice, and the Associate Justices, of the Supreme Court of the United States:

The petition of Clifford Collins and fifty-nine (59) other seamen, all members of the crew of the Steamships "India Arrow" and "Java Arrow," Libellants below, respectfully show as follows:

This is a petition for a Writ of Certiorari to review a decision of the Circuit Court of Appeals for the Fifth Circuit, in Admiralty, rendered December 19th, 1940, Appellees' Motion for Rehearing overruled January 14, 1941, which reversed a decree of the District Court for the Southern District of Texas, Houston Division, allowing recovery of Fifty ($50.00) Dollars each to each member of the crew

under a contract for war bonus for working on said vessels during the Spanish Civil War while the vessels entered the port of Santa Cruz de Tenerife, Canary Islands, Spain. The Circuit Court of Appeals disagreed with the District Court on all the questions of law involved, the District Court having held that the language of the contracts sued upon by libellants, appellees, was clear and unambiguous and, therefore, binding on the Respondent, whereas the Circuit Court of Appeals held the contract to be ambiguous and reformed and rescinded the contract as written by the parties. The opinion of the Circuit Court of Appeals was written by Circuit Judge Sibley and concurred in by Circuit Judge Holmes and McCord.

Statement.

On the 5th day of June, 1938, and on July 24, 1938, respectively, Libellants below joined the Steamships "India Arrow" and "Java Arrow," signing regular shipping articles fixing wages, voyages and other conditions of employment and in addition thereto on the same dates entered into contracts with the National Maritime Union, of which Libellants were members, and under which contracts it was provided that should the vessels in question call at Spanish ports, each member of the crew would be awarded Fifty ($50.00) Dollar bonus for the trip in addition to their regular wages, providing, however, that this shall last only until such time as the United States Maritime Commission cancelled similar bases applicable to government-operated ships which might call at Spanish ports. It was further provided that no bonus shall be paid unless the above-named vessels called at Spanish ports. The undisputed evidence showed that the SS "India Arrow" and SS "Java Arrow" entered the port of Santa Cruz de Tenerife in the Canary Islands off the West Coast of Africa, which was at the time a Spanish port. Upon the completion of the voyages

and return of the vessels to the United States Respondent refused to pay the war bonus of Fifty ($50.00) Dollars each to the members of the crew, stating that the port of Santa Cruz de Tenerife in the Canary Islands was not a Spanish port; and that the definition of what constitutes the War zone could be found in the United States Maritime Commission Order and the agreement with respect to the "India Arrow" and the "Java Arrow," and that the contracts sued upon were perfectly plain and unambiguous. Libellants sued for the Fifty ($50.00) Dollars to each member of the crew and penalties for failure to pay wages. The suit resulted in a decree in favor of petitioners against respondent for Fifty ($50.00) Dollars to each one of the libellants, and denied recovery for penalties under Section 596, Title 46 United States Code Annotated.

Decisions of the District Court.

The Court found as a fact that Santa Cruz de Tenerife in the Canary Islands was at that time a Spanish Port, and that all libellants were seamen on the steamships at that time. It, therefore, found the following conclusions of law:

"Conclusions of Law.

"1. There is a distinct difference between the wording of the United States Maritime Commission Order and the Agreements with respect to the "India Arrow" and "Java Arrow". The portions of the Agreements and Order which I have underscored clearly disclose this. The Order of the Maritime Commission apparently is confined solely to the *territorial waters of Spain* (in Europe), Spanish Morocco and the Balearic Islands, and the waters between the Balearic Islands and the Spanish mainland, while the Agreements respecting the "India Arrow" and the "Java Arrow", dated some eight or nine months later, were made to include *Spanish Ports.*

"I do not think the reference to the United States Maritime Commission Order has the effect of substi-

tuting the wording in that Order for the wording in the Agreements. It may be there was some reason for wording the Agreements differently from the Order. Conditions may have changed between times. The danger zone may have become enlarged. I think the Court should not lightly regard language in an agreement which is perfectly plain.

"2. I think the Court may not accept as controlling here, the action of other companies with respect to similar controversies with the Maritime Union or its members.

"3. I do not think this case calls for the Court to undertake to reform a perfectly plain contract between the parties.

"4. I do not think Libellants are entitled to the Statutory penalty under Section 596, Title 46, U. S. C. A., but are entitled to each recover the agreed bonus."

The Decision of the Circuit Court of Appeals.

In its opinion the Circuit Court of Appeals disagreed with the District Court holding that the contracts sued upon were perfectly clear and unambiguous, but on the contrary held that the words "Spanish Ports" could mean either ports in Spain or ports belonging to Spain. Therefore, considered other circumstances and other contracts and conversations held some months prior to the time the contracts sued upon were executed.

Judge Sibley said in part:

"The evidence shows without conflict that during the Spanish Civil War, on Sept. 23, 1937, the United States Maritime Commission agreed to pay a cash bonus of $50 on government operated vessels which entered danger zones in Chinese and Spansh waters, and if vessels were interned to pay wages during such delay, defining the Spanish waters meant as 'Territorial waters of Spain, Spanish Morocco and the Balearic Islands, including waters between the Balearic Islands and the Spanish mainland.' On Sept. 29, 1937, the

Export Steamship Corporation and the National Maritime Union, by M. Byne, (it being the union of which libellants are members), made a contract for a ship of that corporation, providing a $5.00 per month increase in pay and a $50 bonus and wages during internment, but the bonus was to be paid only if the ship should 'go into ports of Spain * * * until such time as the U. S. Maritime Commission cancels similar basis applicable to government operated ships which might call at Spanish ports.' On October 7, 1937, appellant was about to sail a vessel into the Mediterranean Sea, and its representative, Capt. Fiske, at New York, conferred with Howard McKenzie acting for the National Maritime Union, called his attention to the action of the Maritime Commission, and exhibited a copy of the contract between the Union and the Export Steamship Corporation, and asked if it was satisfactory to be used with the vessels of appellant, and he agreed. Fiske then dictated a contract which he thought was the same as the Export contract, but it used as to the bonus the words 'should call at Spanish ports' instead of 'going into ports of Spain.' The wording was identical otherwise. Fiske executed it for appellant and McKenzie for the Union. Without any further discussion exactly similar contracts were later executed for seven other vessels of appellant, including the two here involved. None of these vessels was intending to go into the Canary Islands and those Islands were not discussed or considered in framing any of the contracts. On March 11, 1938, one of the appellant's ships was about to sail from Boston to Santa Cruz de Tenerife, and a contract in the above form was tendered to the crew, but they refused to sign on unless a bonus was provided for. Fiske conferred with the Union, speaking with M. Byne, who seems to be the same who signed the original Export Steamship Corporation agreement, and they agreed that the bonus contract did not include Tenerife, and that the crew should sign on without a bonus for going there, and this was done. The contracts before us were signed about two months later, on June 8 and

June 17, with no notice to Fiske of any change of view or contention on the part of the Union. But Libellants proved by a representative of the Union at New Orleans that on March 22, 1938, a Union contract was signed in Texas with the American-West African Line for one of its vessels, providing a bonus of $50, if in the port port of Tenerife, or 100 miles thereof, the ship should be attacked by airplane, armed trawler, or man of war. Fiske testifies without contradiction that the contracts he made were understood to refer only to the Spanish ports in the danger zone pointed out by the Maritime Commission, and had no reference to remote islands or possessions of Spain.

"Since the American-West African contract was with another party and was altogether different in wording from those before us, and was not known to Fiske when these were made, nor considered in making them, it can throw no light on them. Yet the contracts in controversy do not stand independent and alone, but are mere repetitions as to these two ships of the original agreement made between appellant and the Union on October 7, 1937. The same form was used, with no further discussion of the terms. There is a direct reference in the contracts to the action of the Maritime Commission as to 'Spanish ports' which shows the parties intended their contract to have the same substantial scope as to the action of the Commission. The practical interpretation of the contract in the case of the ship sailing from Boston to the Canary Islands on March 11, 1938, is a powerful evidence that neither side thought the Islands included. Fiske's testimony to that effect is wholly uncontradicted.

"With the intent of the Union thus established the seamen whom it represented cannot claim a different intent. The Union and not they signed these contracts. The Union was their representative, and the contracts mean what their representative and the opposite party understood them to mean.

"The judgment is set aside in each case and one will be entered dismissing the libel at libellant's cost."

Judge Sibley was of the opinion that the libellants were not entitled to recover because on March 11, 1938, some three or four months prior to the time the contracts sued upon were entered into, one of the appellant's ships which was about to sail from Boston to Santa Cruz de Tenerife under a similar contract providing for Fifty ($50.00) Dollar war bonus in the event the vessel touched a Spanish port was turned down by the crew when they learned that respondent did not intend to pay them the bonus for this particular voyage, and that subsequent thereto when M. Byne, acting for the Union, agreed on that particular trip that the bonus contract did not include Tenerife, and another crew was signed on without a bonus for going there. Judge Sibley overlooked (first) That the contract of March 11, 1938, specifically omitted the port of Santa Cruz de Tenerife as a port the entry into which war bonus would be paid; (second) that the theatre of civil war changed and conditions changed during June, 1938; (third) That a new crew was signed on March 11, 1938, which, of course, shows that the regular crew insisted on the bonus and refused to sail unless this bonus was assured them; (fourth) The policy of the Union has been shown by their act of March 26, 1938, where another vessel bound directly for Santa Cruz de Tenerife, the Union in behalf of its membership insisted and obtained protection for its members when any vessel would enter waters or ports contiguous to Spain and its possessions. Therefore, the Circuit Court of Appeals erroneously took one instance in which the Union agreed and supplied one crew to go to Tenerife some three or four months prior to the time when the contracts sued upon were entered into as definite and inclusive evidence that the contracts did not cover Santa Cruz de Tenerife, even though it was admitted by the respondent in its answer that it was a Spanish Port.

The Reasons for Granting the Petition.

The petitioners respectfully submit that this petition should be granted for the following special reasons:

(1). This case involves questions of much importance in regard to maritime contracts generally, the result of which will affect not only the men involved in these cases but about sixty other seamen who now have similar suits pending in the District Court of the United States for the Southern District of Texas, Houston Division under exactly the same contract and with the same respondent entered into subsequent to March 11, 1938.

(2). In view of the existing international situation and the ever extending theatre of war including and affecting many ports, it becomes of paramount importance and of great public interest to determine whether simple language such as Spanish Ports includes a belligerent nation's territories, possessions and colonies or it is restricted to the continent where the central government is located.

(3) This case involves questions of much importance in regard to all contractual obligations affecting the interest of the public at large in that the Circuit Court of Appeals held a perfectly plain written contract to be ambiguous, especially so when the contract was written by respondent, and the Circuit Court of Appeals, contrary to firmly established and fundamental principles of law resolved such ambiguity in its favor.

(4) On the question whether an Admiralty Court has the power and authority to reform a maritime and perfectly plain, clear and unambiguous contract.

(5) On the question of the construction of maritime contracts this decision is in conflict with the decision of the United States Supreme Court in *The Eclipse*, 135 U. S. 599, 10 S. Ct. 875, 34 L. Ed. 629, and *Calderon* v. *Atlas Steamship Company, Ltd.*, 170 U. S. 272; 18 S. Ct. 588, as well as the

majority of the Circuit Courts of Appeal. Since *The Eclipse, supra,* this Honorable Court has not passed on the foregoing important question and the same should be settled by this Court because of its vital interest to the public at large and to all American merchant seamen directly involved.

Your petitioners present herewith a Brief and citation of authorities.

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the Seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding the said Court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record, and of all the proceedings of said Circuit Court of Appeals in this case which was entitled in that Court, Socony-Vacuum Oil Company, Inc., claimant of "India Arrow" and "Java Arrow", appellant, versus Clifford Collins, et al., appellees, to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioners may have such other and further relief in the premises as to this Court may seem just, and that the said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court.

Dated, Houston, Texas, April 8, 1941.

Clifford Collins, for himself and in behalf of all the rest of the libellants below in Cause Admiralty No. 547, and Cause Admiralty No. 552, Circuit Court of Appeals, Number 9404.

By Clifford Collins.

The State of Texas,
County of Harris:

Clifford Collins, for himself and in behalf of all the rest of the libellants in the two above consolidated cases, being duly sworn, deposes and says: That he is one of the Libel-

lants in the above cause, that he has read the foregoing petition, and knows the contents thereof, and that the allegations therein are true as he verily believes.

CLIFFORD COLLINS.

Sworn to before me this 8th day of April, 1941.

ESTELLE ROBERTS,
Notary Public in and for
Harris County, Texas.

[SEAL.]

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded, and is entitled to the favorable consideration of this Honorable Court.

HALL ELLER,
Counsel for Petitioners.